

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES HOLBROOK,

Petitioner,

Case Number: 2:18-CV-11013

v.

HON. GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

ERICK BALCARCEL,

Respondent.

**OPINION AND ORDER TRANSFERRING CASE TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner Charles Holbrook has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is presently confined at the St. Louis Correctional Facility in St. Louis, Michigan. He previously filed a § 2254 petition in the United States District Court for the Western District of Michigan, which was denied. The Court determines that this is a successive petition which must be transferred to the Sixth Circuit Court of Appeals. See 28 U.S.C. § 2244(b)(3)(A).

Petitioner was convicted by a jury in Kent County Circuit Court of two counts of producing child sexually abusive material, Mich. Comp. Laws § 750.145c(2), two counts of allowing a child to engage in child sexually abusive activity, Mich. Comp. Laws § 750.145c(2), two counts of

possessing child sexual abusive material, Mich. Comp. Laws § 750.145c(4), accosting a child for immoral purposes, Mich. Comp. Laws § 750.145a, and felon in possession of a firearm, Mich. Comp. Laws § 750.224f. He was sentenced as a third-offense habitual offender to 15 to 40 years imprisonment for the producing child sexually abusive materials and allowing a child to engage in sexually abusive material convictions, 2 years, ten months to 8 years imprisonment for the possessing child sexual abusive material and accosting a child for immoral purposes convictions, and 2 years 10 months to 10 years for the felon in possession convictions. The Michigan Court of Appeals and Michigan Supreme Court affirmed Petitioner's convictions and sentences on direct appeal. *People v. Holbrook*, No. 298869, 2011 WL 5064266 (Mich. Ct. App. Oct. 25, 2011); *People v. Holbrook*, 492 Mich. 853 (Mich. July 24, 2012).

In 2015, Petitioner filed a federal habeas corpus petition under 28 U.S.C. § 2254 in the United States District Court for the Western District of Michigan. The district court denied the petition because it was not timely filed and denied a certificate of appealability. *Holbrook v. Bauman*, 2016 WL 80215 (W.D. Mich. Jan. 6, 2016). The Sixth Circuit Court of Appeals dismissed Petitioner's notice of appeal because it was not timely filed. *Holbrook v. Place*, No. 16-2648 (6th Cir. Jan. 11, 2017).

Before a prisoner may file a habeas petition challenging a conviction already challenged in a prior habeas petition, the prisoner must “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). When a second or successive petition for habeas corpus relief is filed in the district court without prior authorization, the district court must transfer the petition to the Court of Appeals. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997). Petitioner has not obtained from the Court of Appeals for the Sixth Circuit authorization to file a successive petition. Accordingly, the Court **ORDERS** the District Court Clerk to transfer this case to the United States Court of Appeals for the Sixth Circuit.

SO ORDERED.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: April 3, 2018

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on April 3, 2018, by electronic and/or ordinary mail and also on Charles Holbrook #767925, St. Louis Correctional Facility, 8585 N. Croswell Road, St. Louis, MI 48880.

s/Barbara Radke
Deputy Clerk